IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4626 of 1998

to

SPECIAL CIVIL APPLICATION No 4634 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BACHUBHAI GOVABHAI

Appearance:

1. Special Civil Application No. 4626 of 1998

MR KP RAVAL A.G.P. for Petitioner No.1-2 [S.C.A. Nos. 4626 to 4630 of 1998]

MR AD OZA G.P. for Petitioner No. 1-2 [S.C.A. Nos. 4631 to 4634 of 1998]

M/S PATEL ADVOCATES for Petitioner No. 1

MR SP HASURKAR for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 21/07/2004

ORAL JUDGEMENT

1.0. In this group of petitions, the State of Gujarat has challenged the order dated 12th May, 1997 passed by the Labour Court, Surendranagar, in Recovery Applications No.281 of 1993 to 289 of 1993, whereby the Labour Court has directed the State Government to pay a sum of Rs.33,151=00 to each of the respondents.

2.0. The short facts of the case as they emerge from the record are that the respondents were employed as daily wage employees in the Forest Department and all of them have completed minimum service of five years. It is the case of the respondents that, since the work performed by them is a permanent nature of work, they are required to be considered as regular employees and they should be granted all permissible allowances. It is further contended by the respondents that in view of the Circular dated 17th October, 1988, all the employees were granted benefits.

2.1. As against that the say of the State Government is that the Government Resolution dated 17th October, 1988 is applicable to the daily wagers of the Forest & Environment Department engaged in the work of maintenance and repairs of constructions in that Department, and not to the daily wagers engaged in other types of work in that Department. It is further contended that respondents have not worked for 240 days continuously, and in view of that the respondents are not entitled for any benefits.

3.1. The State Government has raised several disputes namely that the Forest Department is not covered under the Government Resolution dated 17th October, 1988 and the Labour Court could not have decided the issue under Section 33-C(2) of the Industrial Disputes Act. Mr. Raval has relied upon the decision of the Full Bench of this Court in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat reported in 2004 (2) G.L.H. 302, and more particularly para 31, wherein it has been held that the Government Resolution dated 17th October, 1988 is not applicable to the daily wagers engaged in other types of work in the Forest Department. The relevant question which was considered in the said decision alongwith its answer is reproduced as under :-

Que-3 "Whether the petitioners or similarly situated employees of the Forest Department are entitled to the benefit of Government Resolution dated 17-10-1988?"

Ans-3 The Government Resolution dated 17th October, 1988 is applicable to the daily wagers of the Forest & Environment Department engaged in the work of maintenance and repairs of constructions in that Department, and not to the daily wagers engaged in other types of work in that Department."

3.2. In that view of the matter the order passed by the Labour Court is required to be quashed and set aside. Even otherwise also in view of the law laid down by this Court under Section 33-C (2) the Labour Court is merely existing Court and it cannot ascertain rights of the parties. Therefore also the order under Section 33-C(2) is required to be quashed and set aside.

3.3. Mr. Raval has also placed reliance on the decision of the Apex Court in the case of State Bank of India v. Ram Chadra Dubey & Ors. reported in (2001) 1 S.C.C. p. 73, wherein it has been held that the Labour Court has jurisdiction under Section 33-C(2) and it extends to computation of a pre-existing benefit or one flowing from a pre-existing right and not to computation of a benefit which is considered just and proper. In the present case the Circular dated 17th October, 1988 was not pre-existing right and it was required to be ascertained by the competent authority.

3.4. Mr. Raval has relied upon a decision of this Court in the case of Milan Cinema & Anr., v. Maganlal Nathalal Mistry, reported in 1999 Labour Law Journal p.220, wherein, it is held that proceeding under Section 33-C(2) is in the nature of execution proceedings where right to receive money or benefit is already determined or admitted and the question is only to the quantum of money or benefit which is to reach the recipient. The question as to entitlement is beyond the scope of enquiry under Section 33-C(2). The Labour Court has therefore no jurisdiction to entertain application under Section 33-C (2) and embark upon an enquiry once issue clearly before it was about entitlement of the claimant to any right. In the present case when the petitioner has disputed the relationship of master and servant, the Labour Court has committed a serious error in entertaining the

application. The right to receive money or benefit is not determined or admitted and therefore, the question as to entitlement is beyond the scope of enquiry under Section 33-C(2).

3.5. Mr. Raval has relied upon a decision of this Court in the case of Naranji Peraji Trans. Co. v. R.B. Waghela, reported in 1998 (2) G.L.R. p.984, wherein it is specifically held that the Labour Court could not have entertained the application since it involved task of adjudicating whether workman actually worked on Sundays and whether he was entitled to the other claims. In the present case also there was no adjudication as to the entitlement of the workmen in respect of certain leave and other benefits as claimed by then, In absence of such prior adjudication the Labour Court should not have entertained the application of the respondents which is contrary to law.

3.6. Mr. Raval next relied upon a decision of this Court in the case of Gujarat Water Supply and Sewerage Board v. Ketanbhai Dinkarray Panday, reported in 2003 (3) G.L.R. p.2281. In that decision, this Court held that recovery application to the Labour Court claiming overtime without the same being adjudicated by the authority under the Minimum Wages Act, is not directly maintainable under Section 33-C (2) of the Act. Therefore, the order of the Labour Court was set aside.

4.0. However, looking to the facts and circumstances of the case and in view of the decisions referred to hereinabove, in my opinion, the order passed by the Labour Court is required to be quashed and set aside.

4.1. In the result, all the petitions are allowed. The order passed by the Labour Court, Surendranagar dated 12th May, 1997, in Recovery Applications Nos.281 of 1993 to 289 of 1993 is quashed and set aside. Rule is made absolute in each of the petitions. No costs.

[K.S. JHAVERI, J.]

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